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**COURT OF APPEAL, FOURTH DISTRICT**

**DIVISION TWO**

**STATE OF CALIFORNIA**

In re SHELLA P., a Person Coming Under  
the Juvenile Court Law.

SAN BERNARDINO COUNTY  
DEPARTMENT OF CHILDREN'S  
SERVICES,

Plaintiff and Respondent,

v.

JOSEPH P.,

Defendant and Appellant.

E029939

(Super.Ct.No. J162694)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Diane Anderson,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Alan K. Marks, County Counsel, Regina A. Coleman and Patricia Campbell, Deputy  
County Counsel, for Plaintiff and Respondent.

Michael D. Randall, under appointment by the Court of Appeal, for Minor.

After a hearing pursuant to Welfare and Institutions Code section 366.26,<sup>1</sup> the trial court terminated the parental rights of Joseph P. (Father) and Shella A. (Mother) to their child Shella P. Father appeals contending the trial court abused its discretion in denying his section 352 request to continue the section 366.26 hearing to allow him to file a section 388 petition. Finding no abuse of discretion, we affirm.

### PROCEDURAL BACKGROUND AND FACTS

On June 17, 1999, the Department of Children's Services (Department) filed a section 300 petition on behalf of Shella, an infant who had been born prematurely, in respiratory distress, testing positive for methamphetamines. Among other things, the petition alleged that Mother had a substance abuse problem and had been arrested on February 18 for manufacturing methamphetamines. At the time of the delivery, she was under the influence of methamphetamines and was resisting medical assistance. Regarding Father, it was alleged that he was on probation for drug manufacturing, had a history of substance abuse, and was unable to care for Shella. At the time of birth, Mother attempted to push Shella back into the birth canal while Father appeared disinterested and emotionally remote. At the detention hearing, the court found that there was a prima facie case established for detention out of the home.

At the July 22, 1999 settlement conference, Father waived his right to a contest and the trial court found the allegations in the section 300 petition to be true.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In the report prepared for the disposition hearing, the social worker noted that both parents exhibited signs of continued drug use. Father submitted on all matters but requested visitation twice a week. Visitation was granted and reunification services were ordered. The court admonished the parents that if the reunification plan was not completed within six months, the matter could be set for a section 366.26 hearing to consider termination of parental rights.

Father's reunification plan required that he (1) successfully complete a parent education class approved by the Department, (2) participate in an alcohol/drug abuse program approved by the Department, (3) demonstrate abstinence from alcohol/drugs for a period of six months prior to reunification, (4) obtain periodic blood, breath, urine, or other chemical test, (5) successfully complete a class in child care and development, (6) demonstrate age appropriate interaction with Shella during visits, (7) locate and maintain an adequate home that is safe and sanitary for Shella, (8) demonstrate an ability to financially provide for Shella through lawful means, (9) not engage in unlawful acts which may result in incarceration, (10) resolve pending criminal proceedings and be available to parent Shella, and (11) not be under the influence at or prior to visits with Shella.

Father visited Shella consistently until December 1999. At the six-month review hearing (§ 366.21, subd. (e)) on March 1, 2000, Father failed to appear. According to the social worker's report filed on February 22, 2000, Father could not be located and he had not made any progress on his reunification plan.

In July 2000, Father was arrested and later sent to state prison to serve his sentence. Although the record does not indicate why Father was arrested, it was reported that Mother, who was arrested with Father, was arrested for the manufacture of methamphetamine.

In December 2000, the social worker for Shella expressed concern that after 18 months the parents continued to receive reunification services even though Shella was removed from them at birth. According to the social worker, during the time Shella visited with her parents, “she exhibited clingy behavior towards her foster parents, unable to interact with even familiar persons. During the time she visited with her father, she exhibited night terrors.” By December 2000, Father was being housed at the Desert View Community Correctional Facility in Adelanto, California. His expected release date was August 14, 2001. Father indicated that he was attending Narcotics Anonymous meetings and had signed up for parenting and anger management classes. The social worker recommended that reunification services be terminated.

On December 19, 2000, a contested 12-month review hearing (§ 366.21, subd. (f)) was held. The social worker testified that she had met with Father in April or May, 2000, after his release from prison. At the time of the meeting, the only part of the reunification plan that Father had participated in was visitation. Father was incarcerated again shortly thereafter and had remained incarcerated for possession. During his time of incarceration, Father did not visit Shella. The social worker noted that Father’s initial visits with Shella resulted in her crying in fear. The social worker opined that Shella feared Father because he was a stranger.

Department requested termination of visitation on the grounds (1) Shella had not visited her with Father, (2) there was no bond between them, and (3) because of her fear of Father, visitation was detrimental. The social worker recommended termination of reunification services because, in her opinion, it was not in Shella's best interest to wait until Father's release date to determine if reunification was possible.

At the hearing, Father presented no evidence; however, he argued that he had not been provided reasonable reunification services. The court found that Father received reasonable services, ordered all further services terminated, and terminated visitation.

The contested 366.26 hearing was held on July 17, 2001. Father's attorney stated that Father had provided her with "numerous certificates of completion of programs that he's done in custody, a parenting class, Alcoholics Anonymous, anger management, as well as four pages of attendance in NA [Narcotics Anonymous]." According to Father's attorney, she had "just received" the documents. She requested a continuance in order to file a section 388 petition. The trial court denied the request finding that there had been sufficient time for the matter to be brought to counsel's attention and a section 388 petition filed, as almost 90 days had passed since the matter was set for trial.

Father did not object to the admission of the social worker's report or the adoption assessment report, nor did he present any evidence concerning Shella's permanent plan. After considering the evidence, the trial court terminated parental rights and ordered Shella placed for adoption. Father appeals.

## DENIAL OF CONTINUANCE

Section 352, in relevant part, provides, “(a) Upon request of counsel for the parent, . . . the court may continue any hearing under this chapter *beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor.* In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause[;] . . . the convenience of the parties is [not] in and of itself a good cause.” (Italics added.) A reviewing court will reverse an order denying a continuance only upon a showing that the lower court abused its discretion. (*In re Angela R.* (1989) 212 Cal.App.3d 257, 265-266.)

Father challenges the trial court’s denial of his request to continue the section 366.26 hearing.

Here, we are unable to say that the trial court abused its discretion in denying Father’s request to continue the section 366.26 hearing because the record fails to show good cause to support such continuance. The purpose of the continuance was to allow Father to bring to the court’s attention the fact that he had successfully completed 120 hours of Alcoholics Anonymous on June 15, 2001, 120 hours of Anger Management on May 25, 2001, and 120 hours of Parenting Classes on June 22, 2001. However, Father was aware of the July 17, 2001 hearing date since April 18, 2001. Despite such knowledge, Father failed to prepare a section 388 petition prior to the July 17 hearing date.

Notwithstanding the above, any continuance would have been contrary to Shella's best interests. "[T]ime is of the essence in offering permanent planning for dependent children." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.) Shella had been in "limbo" for 25 months. As respondent points out, when reunification services have been provided as mandated by statute, the court may not continue the case for further reunification services in excess of 18 months. (*Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1091-1093.) The court had previously found that Father had been provided with reasonable reunification services for the mandated period of time. The record shows that in December 2000, Shella's social worker had expressed concern that both parents continued to receive services after 18 months. She detailed the negative affects the delays were having on Shella. At two years of age, Shella needed to be in a stable environment.

Even if Father had been provided with the opportunity to file a section 388 petition, he would not have prevailed on his petition. "A dependency court order may be changed or modified under . . . section 388 if a petitioning parent establishes one of the statutory grounds, changed circumstances or new evidence, for the modification, and also proves the proposed change would promote the best interests of the child. (§ 388; Cal. Rules of Court, rule 1432(c).) The parent requesting the change of order has the burden of establishing that the change is justified. [Citation.] The standard of proof is a preponderance of the evidence. [Citation.]" (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.)

In this case, although Father completed programs in Alcoholics Anonymous, Anger Management, and Parenting Classes, he could not show six months of sustained abstinence from drugs, he had not located and maintained an adequate home that is safe and sanitary for Shella, he had not resolved pending criminal proceedings so that he was available to parent Shella, and he had not demonstrated an ability to financially provide for Shella through lawful means. Thus, there was insufficient evidence of a change of circumstances to grant any type of modification pursuant to the petition.

Moreover, Father could not have shown that his request to modify the previous order was in Shella's best interest. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251.) At this point in the proceedings, Shella's interest in stability was the trial court's foremost concern, outweighing any interest Father may have in reunification. (*Id.* at pp. 251-252; *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

Based on the above, we find that the trial court properly denied the request to continue the hearing.



DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

WARD

J.

GAUT

J.